

January 8, 2009

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**Elisabeth A. Shumaker
Clerk of Court

ANTHONY LEWIS,

Plaintiff - Appellant,

v.

SPRINT NEXTEL,

Defendant - Appellee.

No 08-3348
(D.C. No. 2:08-CV-02458-JAR-JPO)**ORDER**Before **MURPHY, O'BRIEN** and **GORSUCH**, Circuit Judges.

On December 22, 2008, Anthony Lewis filed a notice of appeal from a district court order filed December 15, 2008. However, the order Mr. Lewis seeks to appeal to this court is an interlocutory order that simply affirms a prior order from a magistrate judge that permitted the defendant to file a late response to Mr. Lewis's complaint and that denied his motion for default judgment.

Following the opening of this appeal, the court issued an order asking the appellant to demonstrate any basis for this court's exercise of jurisdiction. Mr. Lewis responded with "Appellant/Plaintiff Memorandum to the Tenth Circuit Court of Appeals." The response addresses why Mr. Lewis thinks the district court erred in its order, but says nothing about any basis for this court to exercise jurisdiction at this time.

Except in certain circumstances not present here, this court's appellate jurisdiction is limited to review of final judgments. U.S. v. Nixon, 418 U.S. 683 690-92 (1974); Albright v. Unum Life Ins. Co., 59 F.3d 1089, 1092 (10th Cir. 1995).

A decision is "not final, ordinarily, unless it ends the litigation on the merits and leaves nothing for the court to do but execute judgment." See Cunningham v. Hamilton County, Ohio, 527 U.S. 198, 204, 119 S.Ct. 1915, 144 L.Ed.2d 184 (1999) (internal quotations omitted). Thus, "[t]he law normally requires a defendant to wait until the end of the trial to obtain appellate review of a pretrial order." Sell v. United States, 539 U.S. 166, 123 S.Ct. 2174, 2182, 156 L.Ed.2d 197 (2003).

Inasmuch as the district court has not yet dismissed or otherwise brought the case to final judgment, no appealable final order has been entered and accordingly, this court lacks jurisdiction over the attempted appeal.

For the foregoing reasons, this appeal is dismissed for lack of appellate jurisdiction.

The court reminds Mr. Lewis that once the case in the district court is brought to final judgment, he will be under an obligation to file a timely notice of appeal from that judgment if he intends to appeal that final disposition and any previous interlocutory orders. ("An appeal from a final judgment draws into question all nonfinal orders preceding it." Perington Wholesale, Inc. v. Burger King Corp., 631 F.2d 1369, 1370-71 n.2 (10th Cir. 1979); "All prior interlocutory judgments affecting . . . appellants merged into the final judgment and became appealable at that time." Bowdry v. United Airlines,

Inc., 58 F.3d 1483, 1489 (10th Cir.1995)).

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court

A handwritten signature in dark ink, appearing to read "Douglas E. Cressler", written over a horizontal line.

by:
Douglas E. Cressler
Chief Deputy Clerk